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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,681	01/10/2002	Ernst Markart	3597-13-1	9212

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EXAMINER
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HYUN, PAUL SANG HWA

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/043,681

Applicant(s)

MARKART, ERNST

Examiner

Paul S. Hyun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-17, 19, 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-17, 19, 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract significantly exceeds 150 words.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 13 recites that the counter-pressure surface overlies the spring arm, and the spring arm, which extends outwardly from the support surface, urges the test strip

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against the counter-pressure surface. The test strip system according to the claim is not enabling since the spring arm according to the claim would either 1) snap the test strip due to the force exerted to the end portion of the test strip or 2) physically lift the entire test strip off the support surface to pin it against the counter-pressure surface, unless the claim recites that the test strip is flexible enough that only the end portion of the test strip is lifted off the support surface and pinned against the counter-pressure surface. Without the recital of a flexible test strip, it appears that the system according to claims 13 and 14 are not enabling.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is indefinite what the limitation "recesses defined by the when the clamping arm is in said clamping position" recited in the claim is claiming. It is not clear exactly what structural features are defining the recesses.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hönes et al. (US 5,424,035).

Hönes et al. disclose a test strip analysis system comprising:

a test strip 4 with a test field 6; and

an analysis apparatus 2 for measuring the test field of the test strip, which includes a test strip holder 3, wherein the test strip holder 3 has a positioning means in the form of a retaining lug 26 that engages the test strip in a definite position relative to the support surface, the support surface comprising strip seat 20 as well as the surface adjacent the strip seat 20. The apparatus 2 further comprises two holding means 39 situated on the edges of the support surface spaced apart from one another for holding the edges of the test strip. In addition, the middle area of the support surface, which is defined as strip seat 20 that supports the test field, is vertically displaced from the edges of the support surface, such that the test field of the test strip is spaced apart from the edges of the support surface (see Figs. 1 & 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meinecke et al. (US 4,780,283).

Meinecke et al. disclose a test strip analysis apparatus comprising:

A test strip 22 with a test field 60; and

A measuring device for measuring the test field (see Figs. 1 & 2). The measuring device has a strip receiver 2, which includes a support surface 24 for the test strip. The measuring device utilizes a pivotal clamping lever mechanism comprising a cam plate 26, a clamping arm in the form of a stop pin 28 and guide element 32, wherein the base of the stop pin 28 is parallel to the support surface 24. The stop pin 28 is biased towards the support surface and the tip of the stop pin penetrates a recess 52 of test strip 22 to securely immobilize the test strip within the guide element 32 (see lines 63-66 col. 8 and Figs. 2 & 3). The cam plate 26 of pivotal clamping lever mechanism acts as a second lever arm against which a spring 30 works and biases the stop pin 28 towards the surface of the test strip.

The reference further discloses that the guide element 32 comprises a guide slot 34. The guide slot forms a groove, which narrows conically bi-axially (in the direction of

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insertion and vertically) to guide the test strip in position that allows stop pin 28 to penetrate recess 52 of the test strip (see line 64, col. 3 – line 8, col. 4 & lines 59-65, col. 8).

However, the reference does not disclose that the clamping lever mechanism is situated above the support surface or that the clamping lever mechanism engages the surface of the test strip on a side opposite the side that the test strip contacts the support surface.

It would have been obvious to one of ordinary skill in the art to move the clamping lever mechanism disclosed by Meinecke et al. such that the mechanism is situated above the support surface, clamping down on the test strip on a side opposite the side that the test strip contacts the support surface so that the lever mechanism can utilize the aid of gravity to clamp the test strip.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Markart et al. (US 5,281,395)

***Response to Arguments***

With respect to the objections to the Specification, the Drawings, and claim 20 cited in the First Office Action, Applicant's amendments have been fully considered. The objections to the Specification, Drawings, and claim 20 have been withdrawn.

Applicant's arguments regarding the rejection of claims 11 and 12 have been fully considered but they are not persuasive. In the First Office Action, the support surface was defined to comprise strip seat 20 as well as the surfaces adjacent the strip seat. Figure 2 of the reference shows that strip seat 20 is vertically displaced from its adjacent surfaces, such that the test field 6 of the test strip 4 is spaced apart from the edges of the support surface.

Applicant's arguments with respect to the rejection of claims 13 and 14 have been considered but are moot in view of the new ground(s) of rejection. Claims 13 and 14 are rejected under 35 U.S.C. 102 1<sup>st</sup> paragraph for failing to comply with the enablement requirement.

Applicant's arguments with respect to the rejection of claims 15-17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection. Claims 15-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meinecke et al. (U.S. Patent 4,780,283).



Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PSH 12/29/05

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700